

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 5th OF OCTOBER, 2023

WRIT PETITION No. 28917 of 2021

BETWEEN:-

**ABHISHEK AGARIYA S/O SURESH AGARIYA,
AGED ABOUT 34 YEARS, OCCUPATION:
UNEMPLOYED WARD NO. 3 GRAM SEMIRAHA
TEH. PALI DIST. UMARIYA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VAIBHAV PANDEY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THR.
ITS PRINCIPAL SECRETARY REVENUE
DEPT. MANTRALAYA VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER LAND RECORDS AND
SETTLEMENT, GWALIOR (MADHYA
PRADESH)**
- 3. COLLECTOR SHAHDOL DIST. SHAHDOL
(MADHYA PRADESH)**
- 4. COLLECTOR, LAND RECORDS DISTT.
UMARIA (MADHYA PRADESH)**
- 5. SUB DIVISIONAL OFFICER SHAHDOL SUB
DIVISIONAL OFFICE, SOHAGPUR,
DISTRICT SHAHDOL (MADHYA PRADESH)**
- 6. SUB DIVISIONAL OFFICER, UMARIA SUB
DIVISIONAL OFFICE, PALI, DISTRICT
UMARIA (MADHYA PRADESH)**
- 7. TEHSILDAR, TAHSIL PALI, DISTRICT
UMARIA (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI HINTENDRA KUMAR GOLHANI – PANEL LAWYER)
(SHRI K.K. AGNIHOTRI – ADVOCATE FOR INTERVENER)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following reliefs:-

“(i) This Hon’ble Court may kindly be pleased to issue an appropriate writ by setting aside the impugned enquiry report dated 13.02.2017 (Anx. P/7) submitted by the respondent no.5 and directed the respondent to appoint the petitioner in the post of the patwari, district-umariya, in the interest of justice.

(ii) To grant any other relief which may deem fit and proper in the facts and circumstances of the case.”

2. It is the case of petitioner that an advertisement was issued on 06.02.2012 for appointment on the post of *Patwari*. The petitioner also applied for examination and submitted online application form with all relevant documents along with his caste certificate. By letter dated 05.07.2014, respondent No.4 granted permission to some of the candidates for new training session under which the petitioner was also selected from District Umariya as per marks obtained by him and accordingly by letter dated 09.07.2014, the respondent No.4 directed the petitioner to remain present in the new training session.

3. By letter dated 16.08.2016, the result of *Patwari* examination was declared and the petitioner was selected. Thereafter, by letter dated 21.12.2016 written by Deputy Collector on behalf of Collector, District

Umariya sought instructions from Commissioner, Land Records and Settlement by mentioning that although the petitioner had appeared in the *Patwari* examination held in the year 2012 but he was declared unsuccessful and subsequently the petitioner got selected in *Patwari* examination conducted in the year, 2016. The Commissioner, Land Records and Settlement by its letter dated 16.03.2017 written to Collector, Land Records reminded that as per the rules there is a provision for grant of three opportunities to appear in the *Patwari* examination and the petitioner had appeared in the yearly examination conducted in the year, 2016 and he was declared successful by result dated 16.08.2016 and it was also directed that power regarding appointment of *Patwari* lies with the Collector and even the documents have been submitted before office of Collector, therefore the Collector should take an action at his own level.

4. It appears that some complaints were made with regard to the authenticity of the domicile certificate relied upon by the petitioner. Therefore, the Deputy Collector by his letter dated 01.01.2015, which was addressed to the Commissioner, Land Records and Settlement informed that there are some complaint with regard to place of resident of petitioner, therefore the Deputy Collector by his letter dated 01.01.2015, which was sent on behalf of Collector, District Umariya to Commissioner, Land Records and Settlement informed that the complaint with regard to the fact that petitioner is not permanent resident of Umariya is false. Thereafter, a complaint was made to SDO, Pali, District Umariya by Jitendra Singh Paraste by alleging that petitioner had appeared in the examination on the basis of a forged

caste certificate as a result the complainant could not get selected and accordingly, the SDO, Sohagpur District Shahdol by his report dated 13.02.2017 held that petitioner had obtained a forged caste certificate to the effect that he belongs to cast 'Agariya' (Scheduled Tribe) whereas he belongs to 'Vishwakarma' caste and therefore it was proposed that a criminal action may also be taken against petitioner. The aforesaid letter was addressed to Collector, Shahdol. The said letter sent by SDO, Sohagpur, District Shahdol to Collector, District Shahdol is under challenge.

5. A solitary ground has been raised by the counsel for petitioner that in the light of the judgment passed by the Supreme Court in the case of **Madhuri Patil v. Additional Commissioner, Tribal Development and others**, reported in (1994) 6 SCC 241, the jurisdiction lies with the Higher Power Caste Scrutiny Committee and not with the SDO. Therefore the report submitted by SDO, Shohagpur, District Shahdol to the Collector, District Shahdol to the effect that petitioner has relied upon a forged document is without jurisdiction and thus the petition has been filed seeking a direction to the respondents to grant appointment.

6. *Per contra*, it is submitted by counsel for State that the report submitted by SDO, Shohagpur, District Shahdol is in accordance with law and was issued in exercise of jurisdiction vested in it.

7. Heard the learned counsel for parties.

8. The Supreme Court in the case of **Madhuri Patil** (supra) has held as under:-

“13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from

which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer

should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be “not genuine” or ‘doubtful’ or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request

not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his

or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar

the candidate from further study or continue in office in a post.”

9. Thus, from the aforesaid direction, it is clear that Higher Level Caste Scrutiny Committee is empowered to adjudicate the correctness of the caste certificate issued by an authority. However, in the present case, the SDO, Shohagapur, District Shahdol in his report dated 13.02.2017 has specifically stated that the caste certificate was not issued from his office. When the attention of the petitioner was drawn towards the aforesaid findings recorded by SDO, Shohagapur, District Shahdol, then it was submitted by counsel for the petitioner that in fact the caste certificate was issued from the office of SDO, Anupur.

10. Accordingly, the counsel for petitioner was directed to point out the caste certificate on which he had placed reliance. The counsel for petitioner pointed out the caste certificate, which has been filed at page 86 of the writ petition. According to this caste certificate, it was issued from the office of SDO, Shohagapur, District Shahdol. Thus, the contention of counsel for petitioner that the caste certificate relied upon by the petitioner was issued from the office of SDO, Anupur.

11. Therefore, it is clear that the caste certificate, which was relied upon by petitioner was a forged document, which was never issued by any authority competent to do so.

12. Now, the next question for consideration is that what is the difference between false document and forged document.

13. If the allegations are that although the caste certificate was issued by the competent authority but it was obtained by

misrepresenting or placing false facts, then the said caste certificate will be placed in the category of doubtful or false certificate requiring adjudication of his genuineness by the High Level Caste Scrutiny Committee but where the caste certificate was not issued by any authority at all and it was created by somebody or the beneficiary, then the said document cannot be said to be false document but it has to be placed in the category of forged document.

14. Section 191 of IPC defines “giving false evidence” which reads as under:-

“191. Giving false evidence.-Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.”

15. Section 192 of IPC deals with “fabricating false evidence” which reads as under:-

“192. Fabricating false evidence.-Whoever causes any circumstance to exist or makes any false entry in any book or record, [or electronic record] or makes any document [or electronic record] containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence”.

16. The making of false document in the name of an authority intending it to be believed that the document was made by the authority would amount to forgery. Forgery is a process of creating or imitating objects or documents and it also includes making of home made document to resemble with the real document. Forgery is form of fraud, which is liable to be dealt with iron hands.

17. Section 463 and 464 of IPC reads as under:-

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document.—A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of a document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of

a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

18. The Supreme Court in the case of **Mohd. Ibrahim v. State of Bihar**, reported in **(2009) 8 SCC 751** has held as under:-

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the

authority of a person, by whom or by whose authority he knows that it was not made or executed.”

19. Thus all non-genuine documents cannot be placed in the category of forged documents and therefore, the forged documents must be covered by the conditions indicated in Section 463 and 464 of IPC. Once, the SDO, Shohagpur, District Shahdol had given a finding that the caste certificate relied upon by the petitioner was never issued from his office, then it is clear that in fact the petitioner had relied upon a forged document and under these circumstances the law laid down by the Supreme Court in the case of **Madhuri Patil** (supra) would not apply as it is applicable only to decide as to whether the caste certificate issued by the competent authority is genuine one or not. Under these circumstances, the SDO, Shohagpur, District Shahdol was well within his right to give a report to the Collector, Shahdol that caste certificate relied upon by the petitioner is a forged document.

20. Under these circumstances, this Court is of the considered opinion that no case is made out warranting interference with the report dated 13.02.2017 sent by SDO, Shohagpur, District Shahdol as it was well within his jurisdiction, and is in accordance with factual matrix of the case.

21. Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE